

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2006

Coram:

The Honourable Mr. Justice J.A.K. SAMPATH KUMAR

A.S.No.674 of 1992

1. Sombu Padayachi
2. Lakshmi Ammal

.. Appellants/Defendants

vs.

R.K.Ramasami Nainar

.. Respondent/plaintiff

The Appeal is filed under Section 96 of C.P.C. against the Judgment and decree dated 06.09.1990 made in O.S.No.323 of 1989 on the file of the Subordinate Judge, Cuddalore.

For Appellants : Mr. C.R.Krishnamoorthy
For respondent : Mr. Venkateswaran for
M/s. Hema Sampath

JUDGMENT

This appeal is filed against the Judgment dated 06.09.1990 made in O.S.No.323 of 1989 on the file of the Sub Court, Cuddalore, in and by which the learned Subordinate Judge, considering the evidence on record, came to the conclusion that the plaintiff is entitled to the suit claim and accordingly, decreed the suit as prayed for.

2. For convenience, the parties are referred as arrayed in the suit.

3. The brief facts of the case are as follows:

(i) On 14.12.1986, the defendants jointly received a sum of Rs.25,000/- and executed a pro-note in favour of the plaintiff. In spite of repeated demands and a registered notice dated 05.12.1989 the defendants have not paid any amount towards the suit promissory note.

(ii) The defendants state as follows:

There is an oral sale agreement between the plaintiff and the defendants in respect of the immovable property of the plaintiff, for which the defendants had agreed for a sale consideration of Rs.45,000/- and paid Rs.20,000/- in cash. The defendant executed a pronote for Rs.25,000/- towards balance consideration. The plaintiff undertook to perform his part of the contract on or before 31.12.1987, while executing the sale deed in respect of the property in favour of the defendants for Rs.45,000/-. The defendants were ready to pay the balance amount of the sale consideration to get a sale deed from the plaintiff at their cost as per the terms of the agreement. But, in spite of repeated demands, the plaintiff was evading execution of sale deed on account of some enmity. The defendants issued a registered notice to the plaintiff on 22.12.1987 to perform his part of the contract and to execute the sale deed. The plaintiff gave a reply dated 30.12.1987. No money has been paid in respect of the said pronote. The said pronote is without any consideration. Therefore, the suit is liable to be dismissed.

4. The plaintiff was examined as P.W.1. one Masilamani was examined as P.W.2. Exs.A.1 to A.3 were marked on the side of the plaintiff to prove the suit claim and Exs.B.1 to B.4 were marked on the side of the defendants to disprove the suit claim of the plaintiff. The lower court after analysing both the oral and documentary evidence, came to the conclusion that the plaintiff is entitled to the suit claim and accordingly, decreed the suit.

5. Heard Mr.C.R.Krishnamurthy, learned counsel appearing for the appellants and Mr.Venkateswaran learned counsel appearing for the respondent.

6. Upon hearing the rival contentions, the following points were arises for consideration to find out Whether the findings of the lower court in decreeing the suit is in order or otherwise:

(1) Whether the suit pronote was executed by the defendants after receiving due consideration?

(2) Whether the oral sale agreement was entered into by the plaintiff in respect of the suit property in favour of the defendants as alleged in the written statement?

(3) Whether the finding of the lower court, in decreeing the suit is in order?

7. Points 1 to 3: On going through both the oral and documentary evidence available on record, it would show that the defendants have executed the suit pronote namely Ex.A.1. It is the specific case of the defendant that the said pronote was executed towards part payment for the oral sale agreement in respect of the property standing in the name of the plaintiff. But the defendants miserably failed to substantiate their contentions by filing any documentary evidence.

8. The learned counsel for the defendants contended that the oral sale agreement was in fact in respect of the plaintiff property. In such circumstances, the defendants/appellants ought to have produced the documentary evidence and substantiated that the property referred to in the written statement is standing in the name of the plaintiff, to which only there was an oral sale agreement between the plaintiff and defendants. The lower court in fact analysed the defendants' case and negatived the same, by offering proper reasons. The reasons given by the lower court in rejecting the defence theory, do not require any interference.

9. At the time of arguments, the learned counsel appearing for the defendants fairly conceded that in respect of the proceedings in E.P.No.50 of 1991 in O.S.No.323 of 1989, the defendants/judgment debtors paid various amount for which the execution court recorded part satisfaction. The execution proceedings were for a sum of Rs.39,000/- out of which the defendants/appellants' counsel submitted that judgment debtors paid a sum of Rs.23,000/-. Moreover, the learned counsel for the defendants/appellants submitted that the defendants deposited a sum of Rs.7,560/- towards the decree amount in pursuance of the order of this Court in C.M.P.No.14371 of 1992. He further submitted that he has no objection for the plaintiff to withdraw the same.

10. The only contention raised by the learned counsel for the appellants is that in view of the facts and circumstances of the case, interest on the principal amount awarded by the lower court may kindly be reduced.

11. I have perused the records. I find that the lower court has granted interest only at the rate of 9% p.a. on the principal amount. I am of the considered view that there is no valid ground in the submission of the counsel for the appellants.

12. The lower court, after considering the evidence, came to the conclusion that the plaintiff is entitled to the suit claim. I do not find any error in the finding of the lower court and the same does not require any interference.

13. In the result the appeal fails and accordingly, the same is dismissed. Parties have to bear their respective costs.

cla

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge,
Cuddalore.

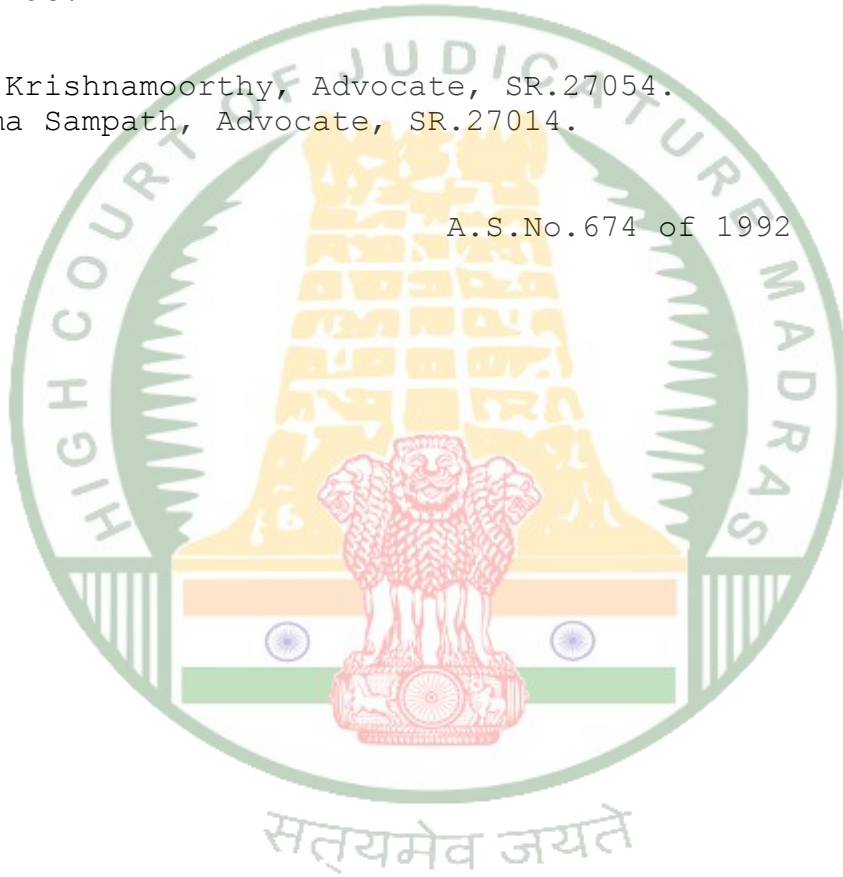
2. The Record Keeper,
V.R.Section,
High Court, Madras.

1 cc To Mr.C.R.Krishnamoorthy, Advocate, SR.27054.

1 cc To Mrs.Hema Sampath, Advocate, SR.27014.

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PV(CO)
RVL 14.07.2006



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